

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEB 25 1998

Amendment of Section 73.202(b),)

MM Docket No. 97-45)
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Table of Allotments,)

RM-8961

FM Broadcast Stations.)

(Tylertown, Mississippi))

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION AND MOTION FOR STAY

GUARANTY BROADCASTING
CORPORATION

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SUMMARY

Guaranty Broadcasting Company ("Guaranty") respectfully submits that the January 16, 1998 order (the "Order") of the Allocations Branch (the "Branch") allotting Channel 297A to Tylertown, Mississippi contravenes fundamental Commission policy. Specifically, the Tylertown rulemaking Order rests upon a blatantly invalid expression of interest that effectively strips the allotment of any legitimate public interest justification. Accordingly, without the requisite bona fide expression of interest, the decision must be reversed and the allotment deleted.

In its comments in this proceeding, Guaranty demonstrated that Roy Henderson, the driving force behind TRL Broadcasting Company (the nominal petitioner), initiated this allotment proceeding in a deliberate attempt to gain undue leverage in his efforts to purchase Guaranty's FM station in Houma, Louisiana (KCIL). The Order, however, virtually ignores Guaranty's showing, characterizing Guaranty's evidence as mere "speculation", but stating that, in any event, this allotment proceeding is not the "appropriate forum" for resolving the issues raised against Mr. Henderson.

The Order, Guaranty respectfully submits, is simply wrong. First, the record of this proceeding includes direct evidence that Roy Henderson is the real party in interest behind TRL Broadcasting Company. Second, and most importantly, Guaranty has direct evidence -- in the form of sworn affidavits from its own officials¹ -- demonstrating that Henderson abused

¹ Guaranty's earlier comments included the sworn statement of its chief financial officer. The subject petition also includes the sworn statements of three additional Guaranty officials, all attesting to the same essential facts.

the Commission's processes by instigating this rulemaking proceeding and submitting an expression of interest which is not bona fide. Third, the issue of whether Roy Henderson abused the Commission's processes by proposing an allotment for which he did not have a bona fide interest is an issue that must be resolved in this forum, as it goes to the very heart of this specific proceeding and the overall integrity of the Commission's allotment procedures.

In light of the foregoing, Guaranty requests that the Branch reverse its decision allotting Channel 297A to Tylertown and delete the allotment as inconsistent with the public interest.

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PETITION FOR RECONSIDERATION AND MOTION FOR STAY

Guaranty Broadcasting Corporation ("Guaranty"), licensee of Radio Stations KCIL(FM), Houma, Louisiana and WTGE(FM) [formerly WBBU(FM)], Baker, Louisiana,² by its attorneys and pursuant to Sections 1.106 and 1.429 of the Commission's rules, hereby petitions for reconsideration of the January 16, 1998 order (the "Order") of the Allocations Branch (the "Branch") allotting Channel 297A to Tylertown, Mississippi in the above-captioned proceeding.³ As demonstrated below, the petition for rulemaking and subsequent expressions of interest filed by TRL Broadcasting Company ("TRL"), the nominal petitioner in

² Guaranty is also the licensee of Radio Stations WDGL(FM), Baton Rouge, Louisiana; WXCT(FM), Baton Rouge, Louisiana; and KJIN(AM), Houma, Louisiana. Pearl Broadcasting, Inc., a wholly-owned subsidiary of Guaranty, is the licensee of Radio Stations WFPR(AM), Hammond, Louisiana; WHMD(FM), Hammond, Louisiana; WBEX(AM), Chillicothe, Ohio; and WKKJ(FM), Chillicothe, Ohio. In addition, Guaranty and Pearl are the members of Guaranty Broadcasting Company of New Orleans, LLC, which is the licensee of WKSJ(FM), Picayune, Mississippi.

³ The Order was released on January 16, 1998, and published in the Federal Register on January 27, 1998; therefore, this petition is timely filed. See 47 C.F.R. 1.4(b).

this proceeding, were not motivated by a bona fide desire to institute a new broadcast service, but were instead intended to give Roy Henderson, the sole individual behind TRL, certain strategic business advantages wholly unrelated to the specific rulemaking proposal. Absent a bona fide expression of interest, the Branch's decision to allot a new FM channel to Tylertown contravenes fundamental Commission policy. Accordingly, Guaranty respectfully requests that the Commission reverse the Order and delete the allotment. Moreover, to the extent necessary and/or until such action is taken, Guaranty urges the Commission to stay the effectiveness of the allotment.

I. BACKGROUND

On November 19, 1996, TRL filed a petition for rulemaking to allot Channel 297A to Tylertown, Mississippi, stating that it would apply for the channel if allotted. See TRL's Petition for Rulemaking at 2. In response to that petition and based on TRL's explicit intentions regarding the channel, the Commission issued a Notice of Proposed Rule Making. Thereafter, on March 31, 1997, TRL submitted comments in support of the proposal and reiterated its specific interest in pursuing the Tylertown channel. See TRL's Comments at 1. No other comments in support of the proposal or expressions of interest were filed.⁴

In its own comments filed on March 31, 1997, Guaranty pointed out that TRL's proposal to allot a new FM station at Tylertown was nothing more than a deliberate attempt by

⁴ Indeed, the only other comment on the record concerning the need for or impact of TRL's proposal came from the only current licensee serving Tylertown, Mississippi (AM/FM Stations WTYL). However, these comments were not "considered" by the staff because the local station licensee, acting on its own, without counsel, failed to serve such comments on the petitioner.

Roy Henderson to gain undue leverage in his efforts to purchase Guaranty's FM station in Houma, Louisiana (KCIL). See Guaranty's Comments at footnote 1. Guaranty's comments were supported by a two-page affidavit executed by Randy Kendrick, an officer of Guaranty, who attested to the following: (1) that Roy Henderson specifically advised Guaranty that he was applying for the Tylertown allotment; (2) that he, Henderson, indicated that the Tylertown allotment would effectively block Guaranty from upgrading Guaranty's FM station in Baker, Louisiana (WTGE); and (3) that he, Henderson, would not go forward with the Tylertown allotment if he could purchase Guaranty's Houma FM station at a substantially reduced price. Guaranty also noted that it had, on the same day, filed an application requesting a "one-step" upgrade of its Baker FM station from Class A to Class C3 facilities.⁵ Accordingly, Guaranty argued that the public interest benefits of its Baker upgrade outweighed any perceived benefits of the questionable new allotment.

On April 15, 1997, TRL submitted reply comments repeating its intent to apply for the Tylertown channel if allotted. See TRL's Reply Comments at 8. Those comments also sought to refute Guaranty's showing regarding TRL's real intent.

The Order virtually ignores Guaranty's showing that TRL's principal, Roy Henderson, was exploiting the Commission's processes to achieve certain business objectives distinct from the proposed assignment of a new FM station at Tylertown, Mississippi -- characterizing such evidence as mere "speculation." In the words of the Branch, "[t]here is nothing in the record

⁵ Although this upgrade was contemplated by Guaranty well before it purchased the Baker station (see Exhibit B hereto), the filing of the WTGE modification application on March 31, 1997 was, in fact, accelerated in light of Mr. Henderson's threats regarding his specific rulemaking activities before the Commission.

of this proceeding beyond the speculation of Guaranty that would suggest that the petitioner will not apply for Channel 297A at Tylertown, or that Henderson is the real party of interest.” Order at footnote 2. In addition, the Branch went on to say that “[t]his docket is not the appropriate forum to resolve any issues pertaining to Henderson.” Id. As such, it reached its decision on nothing more than a simple assessment of the Commission’s standard allotment priorities.

The Branch, we respectfully submit, is wrong. First, the record of this proceeding plainly reveals that Roy Henderson is indeed the real party in interest behind TRL. Second, and most importantly, Guaranty has direct evidence that Henderson’s expression of interest in Tylertown is not bona fide. Third, the issue of whether Roy Henderson abused the Commission’s processes by proposing an allotment for which he did not have a bona fide interest is not a tangential matter (to be relegated to another “forum”) but one that goes to the very heart of this proceeding.

II. THE RECORD OF THIS PROCEEDING CONFIRMS THAT ROY HENDERSON IS THE REAL PARTY IN INTEREST BEHIND THE TYLERTOWN PROPOSAL

The Branch’s finding that there is nothing in the record of this proceeding to “suggest” that Roy Henderson is the “real party” behind TRL is rather remarkable, to say the least. Mr. Henderson’s status was not only confirmed by Guaranty’s direct experience (recounted in the form of a written declaration by one of its chief officers) but by Mr. Henderson himself. In particular, TRL’s reply comments of April 15, 1997 include a signed affidavit by Roy Henderson stating that he is the “sole proprietor of Amelia Broadcasting and TRL Broadcasting Company.” See TRL’s Reply Comments attached hereto as Exhibit A.

Accordingly, there is nothing speculative whatsoever about the connection between TRL and Roy Henderson. They are one and the same.

III. ROY HENDERSON HAS ABUSED THE COMMISSION'S PROCESSES BY INSTIGATING A RULEMAKING PROCEEDING AND SUBMITTING AN EXPRESSION OF INTEREST IN THAT PROCEEDING WHICH IS NOT *BONA FIDE*

The Commission's rationale for allotting a new broadcast channel only upon receipt of a bona fide expression of interest is set forth in Santa Isabel, Puerto Rico, and Christiansted, Virgin Islands, 3 FCC Rcd 2336, 2337 (1988):

Absent an expression of interest, a newly allotted channel could lie vacant after the Commission had expended limited resources conducting a rule making proceeding and after parties had submitted comments regarding a proposed channel. An expression of interest is all the more important where the requested allotment action would conflict with another application. A further allotment under these circumstances would not only waste Commission and participants' resources, it could preclude additional or improved service elsewhere with no countervailing service benefit to the public. Thus, the requirement of an expression of interest is reasonable and necessary to the efficient conduct of the agency's business, and the Commission has good reason to preserve the integrity of its processes by requiring adherence (emphasis added).

Accordingly, to guard against the abuse of its processes, the Commission has adopted an explicit policy in allotment proceedings which holds that any "statement of interest in operating a station made by a party who, in fact, lacks the requisite intent to construct and operate the proposed facility will...be considered a material misrepresentation" within the meaning of the Commission's rules. Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3914 (1990) (hereinafter referred to as "Abuse of Process Order"); see also Oakdale and Campti, Louisiana, 7 FCC Rcd 7600 (1992).

As demonstrated below, Roy Henderson used the Tylertown allotment proceeding to gain a financial advantage in a business transaction that had nothing to do with establishing a new station at Tylertown, Mississippi. His conduct not only wasted valuable Commission resources, but intentionally blocked Guaranty's plans to improve service at its Baker, Louisiana station. Such a blatant misuse of the Commission's processes should not be allowed to stand.

A. Roy Henderson Proposed The Tylertown Allotment To Gain Undue Leverage In His Effort To Acquire One Of Guaranty's Radio Stations At A Substantially Reduced Price

Attached hereto as Exhibits B, C, D and E are statements signed by four different officials of Guaranty demonstrating that Roy Henderson exploited the Commission's allotment process in a deliberate scheme that attempted to force Guaranty to strike a deal to sell one of its stations at a price highly favorable to Henderson.⁶ Such declarations also show that Henderson filed two separate FM allotment proposals with the intent to cause direct and adverse harm to two separate Guaranty stations.

The pertinent facts are relatively straightforward. On October 8, 1996, Guaranty filed an application requesting consent to acquire WTGE in Baker, Louisiana. See FCC File No.

⁶ The four sworn statements are by George A. Foster, Jr., the Chairman and Chief Executive Officer of Guaranty Corporation, which is the parent company of Guaranty (the "Foster Affidavit"); A. Bridger Eglin, the President and Chief Administrative Officer of Guaranty Corporation (the "Eglin Affidavit"); Randy Kendrick, the Treasurer of Guaranty Corporation (the "Kendrick Affidavit"); and Gregory Herpin, the General Manager of several of Guaranty's radio stations (the "Herpin Affidavit").

BALH-961008GI.⁷ Guaranty purchased WTGE specifically intending to upgrade the station from Class A to Class C3 facilities. See Foster Affidavit.

On October 23, 1996, while Guaranty's Baker application was still pending, Roy Henderson contacted Guaranty's Chairman, George A. Foster, Jr., expressing an interest in acquiring KCIL, Guaranty's FM station in Houma, Louisiana. Id. The contact was by telephone and was completely unsolicited. Id. Indeed, prior to that point, neither Mr. Foster nor any other Guaranty official had had any contact with (or even any personal knowledge of) Mr. Henderson. Id. Moreover, prior to that October 23, 1996 telephone call, Guaranty had not entertained the idea of selling any of its stations. Id. Nevertheless, out of curiosity, Mr. Foster agreed to meet with Mr. Henderson. Id.

On November 7, 1996, Henderson visited Guaranty's offices in Baton Rouge, Louisiana and met with Mr. Foster. Id. No other Guaranty officials were present. Id. The meeting was very short, more in the nature of a "get-acquainted" meeting, and ended with Mr. Foster advising Henderson that he would talk to other officials of Guaranty regarding KCIL. Id.

On November 19, 1996, Henderson, through two separate shell companies, filed petitions for rulemaking to allot new FM stations at Tylertown, Mississippi and Amelia, Louisiana. See Notice of Proposed Rule Making in MM Docket No. 97-45, RM-8961 (released February 7, 1997) and Notice of Proposed Rule Making in MM Docket No. 97-8,

⁷ The application was approved shortly thereafter on November 27, 1996 and, as Commission records reflect, consummated on January 17, 1997.

RM-8957 (released January 17, 1997), respectively. Tylertown is located near the northern Louisiana border and Amelia is located approximately 20 miles west of Houma, Louisiana.

On December 10, 1996, Henderson again visited Guaranty's offices in Baton Rouge. On this occasion, he met with Mr. Foster and Gregory Herpin, the general manager of several of Guaranty's Louisiana-based radio stations. See Foster Affidavit and Herpin Affidavit. In that December 10, 1996 meeting, Henderson advised Guaranty that he was still very interested in acquiring KCIL, indicating that he wanted to move the Houma station closer to New Orleans and program Spanish music. Id. After advising Messrs. Foster and Herpin that he, Henderson, was aware of Guaranty's plans to upgrade WTGE in Baker, Louisiana, Henderson disclosed his plans to ask the Commission to add new FM allotments at Tylertown and Amelia. Id. In doing so, Henderson made it clear that his Tylertown allotment proposal would block Guaranty's plans to upgrade WTGE in Baker and that his Amelia allotment proposal could adversely impact Guaranty's competitive position in Houma. Id. In fact, Henderson showed Messrs. Foster and Herpin several engineering maps and spacing studies to illustrate how the Tylertown and Amelia proposals could potentially hurt Guaranty. Id. When asked what price he had in mind for the sale of KCIL, Henderson responded by asking what the purchase price had been for the last FM station sold in New Orleans. Id. In response, Mr. Herpin mentioned the figure \$6.75 million. Id. Henderson then suggested that that price would "be a starting point for negotiations for KCIL." Id.

Finally, on March 7, 1997, Henderson again visited Guaranty's offices in Baton Rouge. The meeting on that date included four Guaranty officials; namely, Messrs. Foster and Herpin, as well as Randy Kendrick, Guaranty's Treasurer, and A. Bridger Eglin, Guaranty's President. See Foster Affidavit, Herpin Affidavit, Kendrick Affidavit and Eglin Affidavit. At the outset

of the March 7, 1997 meeting, Henderson again advised Guaranty that he wanted to acquire KCIL and repeated earlier threats regarding the impact his proposed Tylertown and Amelia allotments would likely have on Guaranty's Baker and Houma stations. Id. During this part of the meeting, Mr. Kendrick recalls Henderson commenting to the effect that "we need to work together." See Kendrick Affidavit. Henderson then urged Guaranty to set a price for KCIL. See Foster Affidavit, Herpin Affidavit, Kendrick Affidavit and Eglin Affidavit. After Mr. Foster threw out a "tongue-in-cheek" figure of \$8 million, Mr. Kendrick volunteered a possible price of \$6 million -- a figure that was in line with the price that Henderson had earlier said would be a "starting point for negotiations" for the station. Id. Henderson counter-offered with a substantially lower price of \$2 million. Id. At that point, Henderson specifically stated that he would not go forward with the Tylertown allotment if he could obtain KCIL at a substantially reduced purchase price.⁸ Mr. Kendrick then said to Henderson that he could not understand why Henderson would suggest that they "work together" while, at the same time, Henderson was informing Guaranty of the harm he could cause the company if Guaranty refused to sell him KCIL at a substantial discount. See Kendrick Affidavit. Thereupon, Henderson suggested that Guaranty consider his offer and emphasized his "ability to get what he wanted." See Kendrick Affidavit and Eglin Affidavit. The March 7, 1997 meeting ended on a somewhat disturbing note with Henderson -- apparently confident that he

⁸ Although to the same effect, Mr. Foster recalls Mr. Henderson emphasizing that he would not pursue the Tylertown and Amelia allotments if he could "get KCIL at a highly favorable price" (Foster Affidavit) while Mr. Kendrick recalls Mr. Henderson stating that he would not go forward with either allotment proceeding if he could get KCIL "at a deal" (Kendrick Affidavit).

had boxed Guaranty into a corner -- comparing Guaranty's position to the rather unpleasant way one feels upon "swallowing a chicken bone." Id.

When, in its comments in this proceeding, Guaranty raised a question regarding the bona fide nature of the Tylertown and Amelia rulemaking proceedings, Henderson denied any wrongdoing but, nevertheless, conceded his real objective or strategy. Thus, after putting his own peculiar "spin" on how and why he approached Guaranty, Henderson still boasted that "...if [he] were successful in purchasing a station in the market from Guaranty, it would stand to reason that he would withdraw his participation from one or both of the [Tylertown or Amelia] proceedings." TRL's Reply Comments at 6; see also Declaration of Roy Henderson attached thereto as Exhibit 3.

The Commission has stated that "abuse of process ordinarily involves an intent to gain some benefit by manipulating the Commission's procedures." TRMR, Inc., 11 FCC Rcd 17081, 17087 (1996) The brazenness of Henderson's approach to Guaranty reveals precisely such intent. As the attached affidavits demonstrate, Henderson (1) proposed the Tylertown allotment with the knowledge that it would thwart Guaranty's plans to improve service on its Baker FM station and then (2) proceeded to use the Tylertown proposal as leverage in his effort to acquire Guaranty's FM station in Houma at a substantially reduced price.

Henderson's interest in Tylertown, therefore, was motivated not by a desire to establish a new radio service at Tylertown but by a desire to obtain a strategic business advantage over Guaranty. Thus, Henderson's expression of interest in this proceeding is not bona fide and constitutes a material misrepresentation. The Commission should not reward such an obvious abuse of its processes by allowing the Tylertown allotment to stand.

**B. Roy Henderson Has Established A Pattern Of Filings
Abusing The Commission's Processes**

The seriousness of Henderson's misconduct in this proceeding is compounded by the fact that this is not the first time Henderson has sought to manipulate the Commission's processes for his own private purposes. For example, in Roy E. Henderson d/b/a Pueblo Radio Broadcasting Service, 5 FCC Rcd 4829, 4832 (Rev. Bd. 1990), a comparative hearing case involving a new FM station at Oro Valley, Arizona, FCC Review Board member Eric T. Esbensen, obviously wary of Henderson's "bona fides," issued a separate statement, in which Board member Norman Blumenthal joined, stating that "[a]lthough Henderson has maintained his Oro Valley 'integration' pledge throughout (as well as his divestiture pledges), Henderson's active sales and acquisition pattern of late raises ineluctable skepticism as to the efficacy of both of those pledges" and " [s]hould Henderson ultimately receive this Oro Valley permit, it is devoutly hoped that all interested parties -- competitors current and potential, the local citizenry, and the Commission -- keep a keen eye upon Henderson, lest he renege in the slightest."

Mr. Esbensen's doubts about Henderson's "bona fides" were well-founded because, the following year, a Texas state court found that Henderson had used FCC processes and other means to impede KRTS, Inc., the licensee of KRTS(FM), Seabrook, Texas, from upgrading its station from a Class A to a Class C2 facility and relocating to Alvin, Texas. The licensee in that case had acquired the station from Henderson. As part of the sale, Henderson agreed to assist the new licensee in implementing the station's upgrade in exchange for a substantial amount of money. However, shortly after KRTS, Inc. made its final payment to Henderson, he began to interfere with KRTS, Inc.'s pending upgrade application. First, Henderson filed a

proposal to allot a new station on the same frequency at New Ulm, Texas. Although he subsequently withdrew the New Ulm proposal, Henderson quickly filed yet another proposal for a new station on the same channel as KRTS(FM), this time in Somerville, Texas. Henderson then filed an objection with the Commission opposing KRTS, Inc.'s upgrade application -- the very application for which Henderson had been contractually bound to provide assistance.

KRTS, Inc. filed a civil lawsuit against Henderson and, on May 31, 1991, a Texas trial court granted KRTS, Inc. a temporary injunction specifically ordering Henderson to refrain from filing any FCC license application, objection, or other document that would delay or block the contemplated move of KRTS(FM) to Alvin, Texas. The court further ordered Henderson to withdraw all FCC applications, objections, or other documents that blocked the planned move. See Roy E. Henderson v. KRTS, Inc., 822 S.W.2d 769 (Tex.App.--Houston [1st Dist.] 1992).

On appeal, the Texas Court of Appeals upheld the injunction, reforming the trial court's judgment to read as follows:

After considering all of the evidence received and the argument of counsel, the Court finds and concludes Plaintiff KRTS will probably prevail on the merits at the trial of this case; that Henderson has contractually agreed with KRTS to use his reasonable best efforts to assist KRTS in obtaining permission and approval from the Federal Communications Commission ("F.C.C.") to move its transmitter to Alvin, Texas; that the Plaintiff KRTS will probably prevail at trial when it attempts to prove that Henderson has harassed KRTS and violated the fiduciary and other legal and contractual duties he owes to KRTS by filing applications for competing radio stations with the F.C.C. and by filing informal objections and other documents with the F.C.C. for the apparent purpose of defeating and/or delaying KRTS' planned move of its transmitter site to the Alvin, Texas site.

Id. at 774.

This pattern of behavior before the Commission was, of course, recently repeated in Henderson's related proposal to allot a new FM station at Amelia, Louisiana. Instead of a serious or genuine interest in providing new broadcast service, the Amelia allotment was nothing more than a "bad faith" proposal targeted to interfere with another broadcaster's operations -- in this case, Guaranty. As set forth in the attached affidavits, Henderson specifically advised Guaranty that the Amelia allotment could adversely impact the competitive posture of Guaranty's FM station in Houma. Guaranty questioned the bona fides of Henderson's Amelia proposal by, inter alia, demonstrating to the Commission the physical impossibility of locating a radio tower anywhere near Amelia. The Commission agreed, finding that Henderson had not only proposed constructing the Amelia station in an inaccessible swamp area but that Amelia is not even a legitimate "community" for allotment purposes. See Report and Order in MM Docket No. 97-8, RM-8957 (released September 19, 1997).

**C. The Evidence Demonstrates That Roy Henderson Has Abused
The Commission's Processes For His Own Benefit And To The
Detriment Of Guaranty**

As the Commission has clearly stated, "[w]here there is direct evidence of misrepresentation, or evidence of a pattern of filings in which a party expresses an interest in an allotment and either voluntarily dismisses its proposal prior to action in the allotment proceeding or fails to file an application, a question may arise as to whether the party is advancing proposals in good faith." Abuse of Process Order, 5 FCC Rcd at 3915. Here, we submit, there is not only direct evidence of an abuse of the Commission's processes but an established pattern of similar filings in analogous settings.

Indeed, as graphic proof of the enduring adage that old habits are hard to break, Henderson has again caused the Commission to initiate a public proceeding with the avowed purpose of adding new service when his real purpose was achieving a totally different, undisclosed private purpose. The true intent of Henderson's Tylertown allotment proposal is, in fact, plainly exposed by the sworn affidavits of four Guaranty officials. The steps of Henderson's plan are easily traced. First, Henderson targeted Guaranty's FM station in Houma (KCIL) as a desirable acquisition and contacted Guaranty on his own to express his interest in acquiring the station. Second, Henderson proposed new FM allotments at Tylertown and Amelia -- allotments strategically placed to interfere with Guaranty's other stations in Baker and Houma. Third, Henderson specifically advised Guaranty that his Tylertown and Amelia proposals would harm Guaranty if allotted. Fourth, and most important, Henderson specifically told Guaranty that he would withdraw his Tylertown and Amelia proposals if Guaranty would sell him its Houma station at a highly favorable purchase price.

In sum, Henderson initiated this proceeding solely to manipulate the Commission's processes to gain a strategic advantage in striking a business deal wholly unrelated to providing a new radio service at Tylertown, Mississippi. Although his strategy ultimately failed to force Guaranty into selling its Houma station at a discount price, the residual rulemaking action continues to preclude the proposed upgrade to Guaranty's Baker station. Accordingly, the public interest demands that the Commission correct the destructive impact of Henderson's material misrepresentation by promptly deleting the allotment of Channel 297A at Tylertown.

IV. THE INSTANT ALLOTMENT PROCEEDING IS THE ONLY FORUM IN WHICH TO RESOLVE THE ABUSE OF PROCESS ISSUES PERTAINING TO ROY HENDERSON

It is fundamental Commission policy that, without a bona fide expression of interest, a new allotment is not in the public interest. See Abuse of Process Order, 5 FCC Rcd at 343915; Oakdale and Campti, Louisiana, 7 FCC Rcd at 7600. Nevertheless, in the Order, the Branch declined to address the real party in interest and abuse of process issues raised by Guaranty, finding that such issues were not “appropriate” for consideration in this proceeding. As support for this conclusion, the Branch cites only Monterey, Tennessee and Monticello, Kentucky, 7 FCC Rcd 1606 (1992). See Order at footnote 2. Its reliance on Monterey, however, is misplaced.

In Monterey, the Commission affirmed a Staff Decision that “issues concerning licensee or permittee misconduct occurring *outside the context of the allotment proceeding* are irrelevant to the determination concerning the action to be taken in such a proceeding, and are more appropriately raised outside of the rulemaking process.” Monterey, Tennessee and Monticello, Kentucky, 7 FCC Rcd at 1607 (emphasis added). The misconduct at issue in Monterey involved matters that were clearly outside the scope of the rulemaking process.⁹ In the instant case, however, the misconduct of Roy Henderson (i.e., directly abusing the

⁹ Specifically, the misconduct at issue in Monterey involved allegations (i) that the construction permit awarded to the petitioner in that proceeding was issued in a false name wrongfully given by one of the petitioner’s principals; (ii) that the petitioner had assigned the permit to a related company even though that entity had not yet come into existence; (iii) that an unauthorized transfer of control had occurred; and (iv) that a minority shareholder had represented himself to a prospective buyer as the owner of the station involved and had offered to sell the station for varying prices depending on whether or not the proposed rulemaking was approved.

Commission's processes by prosecuting an allotment proposal without a bona fide purpose) has occurred completely within the context of a specific allotment proceeding that directly undermines the basic integrity of the overall rulemaking process. Unlike the allegations at issue in Monterey, the issue of Henderson's motivation in pursuing the Tylertown allotment is an issue that goes to the very heart of this rulemaking proceeding. The proceeding should not have been initiated and clearly should not be allowed to go forward without a bona fide foundation. Accordingly, the issues raised by Guaranty must be resolved in this proceeding. There is no other forum in which to do so.

V. THE EFFECTIVENESS OF THE ALLOTMENT MUST BE STAYED PENDING RESOLUTION OF THE SERIOUS ISSUES RAISED HEREIN

Given the serious nature of the issues raised, the public interest requires that the Commission stay the Tylertown allotment's March 2, 1998 effective date until this matter is resolved -- i.e., by deletion of the allotment and, to the extent any further actions are deemed necessary (see Section VI below), a referral by the Branch of such matters to other, more appropriate offices within the Commission. No harm will result to any party as a result of such a limited stay because (1) only one party, TRL, submitted an expression of interest in this matter (albeit a false expression) and (2) the Commission's current freeze on the filing of applications for new stations effectively prevents any possible harm to any party potentially interested in filing for the Tylertown allotment. See Notice of Proposed Rulemaking in Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses in MM Docket No. 97-234, FCC 97-397 (released November 26, 1997). In addition, of course, the Branch has already announced that it will not begin accepting any applications for the channel until such

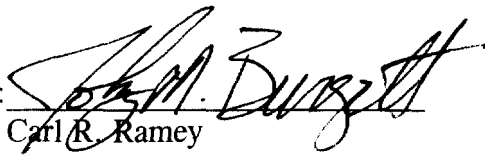
larger issues are addressed and a separate, future order is released in this proceeding. See Order at ¶ 7.

VI. CONCLUSION

Based on the foregoing, Guaranty respectfully requests that the Branch reverse its decision allotting Channel 297A to Tylertown and delete the allotment as inconsistent with the public interest. Moreover, Guaranty requests that the Branch stay the effectiveness of the allotment during the pendency of this petition for reconsideration. Finally, should the Commission decide to initiate any further actions focusing specifically on Mr. Henderson's misconduct, Guaranty requests that the Commission do so in a separate proceeding so as not to needlessly delay Guaranty's efforts to upgrade its FM station in Baker, Louisiana.

Respectfully submitted,

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February 25, 1998

EXHIBIT A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)	MM Docket No. 97-45
)	
Amendment of Section 73.202(b))	RM-8961
Table of Allotments)	
FM Broadcast Stations)	
Tylertown, Mississippi)	

To: The Chief, Allocations Branch

REPLY COMMENTS

TRL Broadcasting Company ("TRL Broadcasting"), by counsel, pursuant to 47 CFR § 1.420(b) and the Notice of Proposed Rule Making issued in the above-captioned matter,¹ hereby submits its Reply Comments in response to the Comments filed by Guaranty Broadcasting Corporation ("Guaranty") in the above-captioned matter.² The NPRM proposed amending the FM Table of Allotments, Section 73.202 of the Commission's Rules, to assign FM Channel 297A to the community of Tylertown, Mississippi. In support of its Reply Comments, TRL Broadcasting states as follows:

I. INTRODUCTION

1. In its Comments, Guaranty includes a nearly two-page footnote containing an irrelevant stream of baseless innuendo. Guaranty never explains the purpose of this diatribe in connection with this or any other ongoing Commission proceeding. Much of the "Comments" contains material copied

¹ Notice of Proposed Rule Making, MM Docket No. 97-45, RM-8961, Released February 7, 1997 ("NPRM").

nearly verbatim out of a pleading filed by Guaranty in MM Docket No. 97-8.³ Although listed in the certificate of service, undersigned counsel was not actually served with this Amelia pleading until after he had read the instant Comments and inquired of Guaranty's counsel. Accordingly, a copy of this pleading is being simultaneously filed in MM Docket No. 97-8, in order to preserve the integrity of the record in that case.

II. GUARANTY HAS MISUNDERSTOOD THE LAW AND MISREPRESENTED THE FACTS

A. Guaranty Misstates The Law

1) Pueblo Radio Broadcasting Service

2. Guaranty starts its attack by quoting a seven-year-old Review Board decision entirely out-of-context.⁴ Cited as a case showing matters of a "questionable nature" on the part of Mr. Henderson, the only thing that is shown to be "questionable" is Guaranty's counsel's judgement in presenting a case so boldly out-of-context.⁵

3. Guaranty quotes the decision as follows:

[I]t is devoutly hoped that all interested parties – competitors current and potential, the local citizenry, and the Commission – keep a keen eye upon Henderson....

Comments, p. 1, n. 1. However, the complete text reads:

² Comments, filed by Guaranty on March 31, 1997.

³ MM Docket 97-8 proposes the allotment of Channel 249C3 to Amelia, Louisiana. See, Notice of Proposed Rule Making, MM Docket No. 97-8, RM-8957, Released January 21, 1997.

⁴ Comments, p. 1, n. 1.

Should Henderson ultimately receive this Oro Valley permit, it is devoutly hoped that all interested parties--competitors current and potential, the local citizenry, and the Commission--keep a keen eye upon Henderson, lest he renege in the slightest.

Roy E. Henderson d/b/a Pueblo Radio Broadcasting Service, 5 FCC Rcd 4829, 4833 (Rev. Bd. 1990). When read in context, it is clear that the Review Board decision is narrowly concerned with Mr. Henderson's integration pledge in that specific case. There is no mention of any wrongdoing on the part of Mr. Henderson and no "questionable" conduct whatsoever.⁶

4. In Pueblo Radio, Mr. Henderson was recognized as an experienced broadcaster and owner of many broadcast interests. Thus, Mr. Henderson's competitors in that case argued unsuccessfully that he would not uphold his integration pledge. However, the Review Board held Mr. Henderson above blame:

Accordingly, we affirm the ALJ's award of 100% "integration" credit to Pueblo, since there is insufficient reason at this point to question Henderson's commitment, and his ongoing broadcast transactions during the course of this proceeding are fully consistent with the Commission's recognition that principals are not expected "to remain static during often lengthy proceedings." Coast TV, 4 FCC Rcd 1786 (1989)("Coast I") (But see Separate Statement, post.) Moreover, "there has been no allegation that [Henderson's various broadcast transactions] ha[ve] contravened any outstanding Commission rule or policy; and, thus, his 'activities'

⁵ A copy of the case is attached hereto as Exhibit 1.

⁶ Guaranty appears in some places to be concerned about Mr. Henderson's sales transactions. However, it is noted that Guaranty is no stranger to broadcast sales as witnessed by the 5 assignment applications that Guaranty has filed over just the past two years. See Exhibit 2.